

Original filed 8/16/06

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRELL MCGHEE,

Petitioner,

vs.

SCOTT KERNAN, Warden,

Respondent.

C 06-0744 JF (PR)

ORDER DENYING MOTIONS TO
PROCEED IN FORMA
PAUPERIS AND TO PAY FILING
FEE WITHIN THIRTY DAYS;
DENYING MOTION FOR
APPOINTMENT OF COUNSEL
WITHOUT PREJUDICE

(Docket Nos. 2, 3, 5)

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner also filed two motions to proceed in forma pauperis and a motion for appointment of counsel. The Court will DENY Petitioner's motions to proceed in forma pauperis and order Petitioner to pay the filing fee and DENY Petitioner's motion for appointment of counsel without prejudice.

DISCUSSION

A. Motions to Proceed In Forma Pauperis

Petitioner filed two motions to proceed in forma pauperis, but his trust account documents reveal that for the six months preceding the filing of this petition, Petitioner had average monthly deposits of \$ 28.00, and an average balance of \$13.00. This is

sufficient to pay the \$5.00 habeas filing fee. Accordingly, Petitioner's motions to proceed in forma pauperis (docket nos. 2, 5) are DENIED. Within **thirty days** of the date this order is filed, Petitioner shall pay the \$5.00 filing fee. Petitioner shall include with his payment a clear indication that it is for this case number, C 06-0744 JF (PR). Failure to pay the filing fee within **thirty days** of the date this order is filed shall result in the dismissal of this action without prejudice.

B. Motion For Appointment of Counsel

Petitioner filed a motion for appointment of counsel. Petitioner asserts that appointment of counsel is necessary because he has no training in the law, he has limited law library access, and the instant petition states a prima facie case for relief. See Pet.'s Mot. at 1.

The Sixth Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) authorizes appointment of counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require and such person is financially unable to obtain representation." The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986), cert. denied, 481 U.S. 1023 (1987); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984).

The Court concludes that the interests of justice do not require appointment of counsel at this time. The Court has yet to review the claims set forth in the instant petition, nor the merits of these claims. Appointment of counsel is premature at this stage of the proceedings. Accordingly, Petitioner's motion for appointment of counsel (docket no. 3) is DENIED without prejudice.

IT IS SO ORDERED.

DATED: 8/16/06


JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Darrell McGhee
3 C-84197
4 CSP -Sacramento
5 P.O. Box 290066
6 Represa, CA 95671-0066
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28